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IN THE HIGH COURT OF GLUTARIC AT AHMEDABAD

CRIMINAL APPEAL No 239 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GLUTARIC

Versus

AMAD NOORMAMAD @ JINIVA KHAFI

Appearance:

MR A.J.DESAI, ADDL. PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.L.DAVE

Date of decision: 25/08/98

ORAL JUDGEMENT Per Bhatt,J.

The appellant-State of Gujarat has questioned the legality of the impugned acquittal judgment and order recorded by the learned Additional Sessions judge, Jamnagar in Sessions case No. 70 of 1990 passed on 14.12.1990, whereby the respondent-accused came to be acquitted of the charges under sections 392, 397 and 457 of the IPC, by filing this appeal under section 378 of the Code of Criminal Procedure, 1973 ('the Code').

The respondent accused was sent up for trial of a charge which came to be framed at exh.4, before the trial court in which it was alleged by the prosecution that on 7.7.1990 at about 2.30 a.m in the early morning, near Ajmer Pole in the town of Khambhalia of Jamnagar district, he by committing criminal trespass in the house of the complainant Noor Mohmed Isha ,with an intention to commit theft and while committing theft of the suit-case, caused injuries by giving blow of the suit-case on the head of the complainant and thereafter giving a knife blow. The complainant had sustained grievous injuries. The accused ,therefore, came to be charged for having committed offences punishable under sections 392, 397 and 457 of the IPC.

In support of the charge, the prosecution placed reliance on 15 witnesses ,who have not supported the prosecution case including the complainant insofar as the main charges against the accused person are concerned. Except police personnel, almost all the witnesses have turned hostile to the prosecution version. The trial court,on appreciation and evaluation of the evidence, though found the complainant having sustained grievous hurt, acquitted the accused of all the charges as the prosecution failed to substantiate the charges against the accused. Unfortunately, the complainant ,P.W.2, examined at exh.12 has also turned hostile and he has not at all supported the prosecution case. Since there was no sufficient evidence, the trial court recorded the impugned acquittal judgment and order.

We are surprised as to how and why the State has chosen to question the impugned acquittal judgment which has remained unquestionable in view of the fact that all the witnesses including injured complainant have turned hostile.

It is a settled proposition of law that in order to convert acquittal into conviction, it must be successfully shown by the appellant-State that the impugned judgment is covered in any one of the following categories:

- (i) it is demonstrably unsustainable;
- (ii) it is palpably wrong;
- (iii) it suffers from misreading of evidence; and
- (iv) it is apparently wrong which has culminated into miscarriage of justice;

Apart from the fact that the appellant-State has not been able to convince us that the present appeal falls in any one of the aforesaid categories, it is also a settled proposition of law that even if we were to take a different view or distinct perception upon evaluation of evidence that by itself is not sufficient to discard the possible view recorded by the trial court in the impugned acquittal judgment. In other words, merely because a different view could be pursued from the facts and circumstances and the evidence, ipso facto, is not sufficient to interfere with the impugned acquittal judgment. No doubt, the view taken by the trial court, in our opinion, is the only possible and plausible view, since all the important witnesses including the complainant -injured, have turned hostile to the prosecution case. Therefore, this is nothing but futile exercise which we have to undertake since the State has chosen it fit to invoke powers under section 378 of the Code.

In the circumstances, we are left with no alternative but to raise our hands in helplessness and to dismiss this appeal, while confirming the impugned acquittal judgment and order. Accordingly, the appeal is dismissed. Bail bonds of the respondent-accused shall stand cancelled forthwith.
